Board of Alien Labor Certification
United States Department of Labor
Washington, D.C.

DATE: December 4, 1997
CASE NO: 96-INA-375

In the Matter of:

EXECUTIVE AMENITIES, INC.
Employer

On Behalf of:

JOHN BASDEO
Alien

Appearance: Michael B. Schwartz, Esquire
Rockville, MD
For the Employer and Alien

Before: Holmes, Huddleston, and Neusner
Administrative Law Judges

JOHN C. HOLMES
Administrative Law Judge

DECISION AND ORDER

The above action arises upon the employer's request for review pursuant to 20 C.F.R. 656.26 (1991) of the denial by the United States Department of Labor Certifying Officer ("CO") of alien labor certification. This application was submitted by employer on behalf of the above-named alien pursuant to §212 (a) (5) of the Immigration and Nationality Act of 1990, 8 U.S.C. § 1182 (a) (5) ("Act"). The certification of aliens for permanent employment is governed by § 212 (a) (5) (A) of the Act, 8 U.S.C. §1182 (a) (5) (A), and Title 20, Part 656 of the Code of Federal Regulations ("CFR"). Unless otherwise noted, all regulations cited in this decision are in Title 20.

Under § 212 (a) (5) of the Act, as amended, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and Attorney General that, at the time of application for a visa and admission into the United States and at the

place where the alien is to perform the work: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available; and, (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

We base our decision on the record upon which the CO denied certification and employer's request for review, as contained in the Appeal File,[1] and any written argument of the parties. § 656.27 (c).

Statement of the Case

On December 7, 1994, Executive Amenities ("employer") filed an application for labor certification to enable John Basdeo ("alien") to fill the position of Warehouse Manager at an annual salary of $33,538 (AF 13). The job duties are described as follows:

> Supervise employees in office supply retail establishment warehouse. Coordinate activities of these employees relating to maintaining inventory. Prepare employee schedules and oversee supply of products in warehouse. Responsible for filling orders and reordering goods depending on need. Maintain warehouse in neat and orderly condition to facilitate production and prevent related hazards.

The job requirements are two years of experience in warehouse-related employment. The employer also required that the employee be available from 7:00 a.m. until 3:30 p.m. or 4:30 p.m. until 1:00 a.m. on Monday through Friday, and 9:00 a.m. until 4:30 p.m. on Saturdays (AF 13).

On February 7, 1996, the CO issued a Notice of Findings proposing to deny the labor certification. The CO cited a violation of § 656.21 (b) (6) which provides that U.S. workers applying for a job opportunity offered to an alien may be rejected solely for lawful, job-related reasons. The CO alleged that the employer failed to provide lawful, job-related reasons for rejecting 47 U.S. applicants who met the job requirements of two years of experience in "warehouse related employment" (AF 10). The CO found that 26 applicants possessed two years or more of experience in warehouse management, while 21 others had two years of warehouse-related experience.

In rebuttal, dated April 15, 1996, the employer argued that none of the applicants had the skills necessary to perform the duties of the position. The employer explained that it operates an office supply and furniture warehouse which requires that the incumbent employee be able to perform skills such as packaging, wrapping, storing and handling office furniture items (AF 8). The employer added that warehouse skills for its particular operations are not readily transferable between different businesses and that a warehouse employee with over two years of experience would not necessarily qualify for the position.

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[1] All further references to documents contained in the Appeal File will be noted as "AF."

The CO issued the Final Determination on April 22, 1996 denying certification. The CO found that all 47 U.S. applicants possessed the experience requirement as stated on the certification application and therefore concluded that they were rejected unlawfully (AF 4). On May 23, 1996, the employer requested administrative review of Denial of Labor Certification (AF 1).

Discussion

The issue presented by this appeal is whether the employer provided lawful, job-related reasons for rejecting the 47 U.S. applicants under § 656.21 (b) (6) of the regulations.

Generally, an employer must show that U.S. applicants are rejected solely for lawful, job-related reasons. § 656.21 (b) (6). Furthermore, the job opportunity must have been open to any qualified U.S. worker. § 656.20 (c) (8). Therefore, an employer must take steps to ensure that it has obtained lawful, job-related reasons for rejecting U.S. applicants, and not stop short of fully investigating an applicant's qualifications. The burden of proof for obtaining labor certification lies with the employer. § 656.2 (b).

In the Final Determination, the CO found that the employer failed to provide lawful reasons for rejecting 47 U.S. applicants. The CO determined that all 47 of these applicants met the minimum requirements as stated on the certification application. The employer, however, argued that it lawfully rejected these applicants because none possessed the skills to perform the duties of this particular warehouse position. The employer explained that "warehouse related employment is an industry-specific business with particular skills and knowledge attaching to the particular industry" (AF 8). The employer's argument is unpersuasive. The Board has repeatedly held that an applicant is to be considered qualified for a job if he or she meets the minimum requirements specified for that job in the labor certification application. *United Parcel Service*, 90-INA-90 (Mar. 28, 1991); *Mancillas International Ltd*., 88-INA-321 (Feb. 7, 1990); *Microbilt Corp*., 87-INA-635 (Jan. 12, 1988). Moreover, the Board has held that an employer unlawfully rejects a U.S. worker who satisfies the minimum requirements specified on the ETA 750A and in the advertisement for the position. *Sterik Co.*, 93-INA-252 (Apr. 19, 1994); *American Cafe*, 90-INA-26 (Jan. 24, 1991); *Cal-Tex Management Services*, 88-INA-492 (Sept. 19, 1990); *Richco Management*, 88-INA-509 (Nov. 21, 1989); *Dharma Friendship Foundation*, 88-INA-29 (Apr. 7, 1988). In this case, 47 U.S. applicants possessed the stated minimum requirements of two years or more of warehouse-related employment experience. We therefore find that the employer unlawfully rejected all 47 of these applicants. Accordingly, we agree with the CO and find that certification was properly denied.

ORDER

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

For the Panel:

JOHN C. HOLMES
Administrative Law Judge

NOTICE FOR PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless, within 20 days from the date of service, a party

petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except: **(1)** when full Board consideration is necessary to secure or maintain uniformity of its decision; and,**(2)** when the proceeding involves a question of exceptional importance. Petitions for such review must be filed with:

Chief Docket Clerk
Office Of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced type-written pages. Responses, if any, shall be filed within 10 days of service of the petition, and shall not exceed five double-spaced type-written pages. Upon the granting of a petition, the Board may order briefs.